

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

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U.S. DISTRICT COURT
NEW JERSEY
JAN 30 1995

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICK LIPARI
203 Holley Street
Glassboro, NJ 08028

Defendant.

CIVIL ACTION NO. 95cv507 (JHR)

ORIGINAL FILED

JAN 30 1995

WILLIAM T. WALSH, CLERK

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response,

240055



Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607 and 9613. The United States seeks reimbursement of response costs incurred and to be incurred by the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, in response to the release or threat of release of hazardous substances into the environment at or from a site known as the Lipari Landfill Superfund Site in the Township of Mantua in Gloucester County, New Jersey (the "Site"). The United States also seeks a declaratory judgment, pursuant to Section 113(g) of CERCLA, holding the defendant liable for future costs to be incurred by the United States with respect to the Site in response to releases of hazardous substances into the environment from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1319(b), because the claims arose and the threatened and actual release of hazardous substances occurred in this district.

DEFENDANT

4. The defendant, Nick Lipari, is a resident of Glassboro, New Jersey. Mr. Lipari is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), that

owned and operated the Lipari Landfill at the time of disposal of hazardous substances at the Lipari Landfill, and that currently owns the Lipari Landfill. The original landfill is part of the Site.

GENERAL ALLEGATIONS

5. The Lipari Landfill was, and is, a sole proprietorship, owned and operated by Nick Lipari. Mr. Lipari has continuously owned the landfill since 1957 and operated the landfill from 1957 to 1971.

6. The original landfill occupies approximately 6 acres in the Township of Mantua, Gloucester County, New Jersey. A stream known as Chestnut Branch flows in a northerly direction and lies to the east and northeast of the landfill. Another stream, Rabbit Run, flows in a northeasterly direction and lies to the north of the landfill. Rabbit Run enters Chestnut Branch at a point north of the landfill. Chestnut Branch flows into Alcyon Lake approximately 1,500 feet downstream from the landfill. The legal description of the landfill and adjoining acreage is Block 261, Lot 7 of the Township of Mantua.

7. Occupied homes are near the northeastern border of the Landfill on the opposite side of Chestnut Branch.

8. From 1958 to 1970 or 1971, hazardous substances were disposed of at the Lipari Landfill. During that time, Nick Lipari accepted chemical wastes, including liquid and semi-solid chemical wastes, industrial wastes, and household wastes for disposal at the landfill. Many of the chemical wastes and

industrial wastes were "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

9. The hazardous substances accepted by Mr. Lipari and disposed of at the Lipari Landfill have been released to the environment, inter alia, by percolating into the groundwater under the landfill and by migrating into Chestnut Branch, Rabbit Run, Alcyon Lake and the surrounding environment.

10. Water samples taken from and around the Lipari Landfill revealed that hazardous substances were released into the groundwater, and into Rabbit Run, Chestnut Branch and Alcyon Lake. The hazardous substances which have been released into the groundwater and the above-described surface waters include, but are not limited to, the following: benzene, bis (2-chloroethyl) ether ("BCEE"), 1,1-dichloroethane, trichloroethylene ("TCE"), phenol, toluene, ethylbenzene, chlorobenzene, vinyl chloride, methylene chloride, arsenic, chromium, lead, zinc, chloroform, acrylonitrile, acrolein, methyl chloride, 1,1-dichloroethylene, beryllium, and mercury.

11. Each of the substances listed in paragraph 11 is a listed hazardous substance in Table 302.4 of 40 C.F.R. § 302.4 and each is therefore a "hazardous substance" pursuant to Sections 101(14)(B) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14)(B) and 9602(a).

12. In September, 1983, the Landfill was listed on the National Priorities List ("NPL") promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40

C.F.R. Part 300, App. B, which is a national list of hazardous waste sites posing a threat to health, welfare and the environment. The National Priorities List has been established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

13. The release or threatened release of hazardous substances at or from the Landfill has caused the United States to incur response costs, and further response costs will be incurred.

14. In 1980, the United States began expending monies in response to the release of hazardous substances at the Landfill, including monies for studying the Landfill and for evaluating the remedial alternatives at the Landfill.

15. Based on information collected during its site and remedial investigation, EPA signed a Record of Decision on August 3, 1982 ("ROD I") to construct: a slurry wall encircling 16 acres of contaminated soil and ground water and extending downward to form a seal with the underlying clay (the "containment system") to eliminate and/or minimize further releases from that contaminated area to the surrounding environment; a synthetic membrane cap covering the containment system; a passive gas venting system underlying the cap; and a surface water drainage system overlying the cap to prevent and/or minimize ponding of rainwater or melting snow upon the cap.

16. In May of 1985, EPA undertook a removal action pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, to install a

fence to limit public access to the potentially contaminated marsh area located east of the landfill.

17. In September of 1985, EPA signed a Record of Decision ("ROD II") to undertake a second phase of remedial action pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), to batch flush the containment system required by ROD I, and to monitor the Kirkwood Aquifer. In February, 1986, EPA also issued a Clarification Letter, signed by the Regional Administrator, and sent to all interested parties, regarding implementation of accelerated batch flushing as a component of the ROD II remedy.

18. On July 11, 1988, EPA signed a Record of Decision ("ROD III") to undertake a remedial action pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), to remediate offsite contamination in Chestnut Branch Marsh, Chestnut Branch, Rabbit Run, and Alcyon Lake, to construct and operate a French drain and to construct an associated cap, and to pump and treat the Kirkwood Aquifer.

19. On June 15, 1992, EPA, acting pursuant to Section 300.825(a)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any amendments thereto (the "NCP"), issued an Explanation of Significant Differences with respect to ROD II ("ROD II ESD"), which, along with the appropriate documentation used as a basis for issuing the ROD II ESD, is included in the administrative record supporting ROD II.

20. On June 7, 1993, EPA, acting pursuant to Section 300.825(a)(2) of the NCP, issued an Explanation of Significant Differences with respect to ROD III ("ROD III ESD"), which, along with the appropriate documentation used as a basis for issuing the ROD III ESD, is included in the administrative record supporting ROD III.

21. On September 29, 1989, a partial consent decree signed by the United States, the State of New Jersey, and ten de minimis generator defendants with respect to the Landfill pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), was entered by the court in United States and State of New Jersey v. Rohm and Haas Co., Inc., et al., CA 85-4386. This consent decree provided, inter alia, that the de minimis settling defendants would reimburse the United States and the State for response costs incurred or to be incurred in connection with the Landfill.

22. On April 13, 1994, a partial consent decree signed by the United States, the State of New Jersey, and five defendants with respect to the Site was entered by the Court in United States and State of New Jersey v. Rohm and Haas Co., Inc., et al., CA 85-4386. This consent decree provides, inter alia, that the five settling defendants will reimburse the United States and the State for certain specified response costs incurred or to be incurred in connection with the Site.

23. On September 27, 1993, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA issued Administrative Order Index No. II-CERCLA-0105 to Rohm and Haas Company, requiring Rohm

and Haas Company to perform the remedial action set forth in ROD III, as modified by the ROD III ESD, except for certain excluded components.

24. On March 15, 1994, a proposed consent decree was lodged with the Court in connection with United States and State of New Jersey v. Rohm and Haas Co., Inc., et al., CA 85-4386. This proposed consent decree provides, inter alia, that Rohm and Haas Company will perform the remedial action set forth in ROD III, as modified by the ROD III ESD. The proposed decree further provides that Rohm and Haas Company agrees to waive all claims or causes of action that it may have against Nick Lipari for all matters relating to the Landfill, including for contribution, and that such waiver shall become effective upon entry by the Court of a consent decree resolving Nick Lipari's liability to the United States pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for any costs incurred by the United States with respect to the Landfill.

25. To date, the United States has expended in excess of \$50 million on studies, construction activities and other response actions at the Site. The United States continues to spend additional funds.

CLAIM FOR RELIEF

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for-

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

28. Section 113(g)(2) of CERCLA, 42 U.S.C.

§ 9613(g)(2), also provides that in any cost recovery action brought under Section 107, a court shall enter a declaratory judgment on liability for response costs that will be binding in any subsequent action or actions to recover further response costs.

29. A "facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), in pertinent part as follows:

any . . . landfill . . . or any site or area where a hazardous substance has been deposited, stored, disposed of , or placed, or otherwise come to be located . . .

30. As alleged in paragraphs 9-12, hazardous wastes have been disposed of at the Site.

31. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

32. "Release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in pertinent part, as "any spilling,

leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing into the environment. . . "

33. Hazardous substances disposed of at the Site have been released and continue to be released into the environment, and there is a substantial threat of future releases into the environment.

34. The United States has incurred, is incurring, and will continue to incur unreimbursed response costs as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in response to the release or threatened release of hazardous substances at or from the Site. Such costs were incurred, are being incurred and will be incurred in a manner not inconsistent with the National Contingency Plan.

35. The defendant is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

36. The defendant is currently, and was at the time hazardous substances were disposed of at the Landfill, the owner and operator of the Landfill under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

37. Defendant Nick Lipari is jointly and severally liable under CERCLA, as a person who is the owner and operator of the Landfill and as the person who owned and operated the Landfill at the time of disposal of hazardous substances at the Landfill, under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C.

§ 9607(a)(1) and (2), to the United States for all costs of removal or remedial action incurred or to be incurred by the United States in response to the release or threatened release of hazardous substances at or from the Site.

PRAYER FOR RELIEF

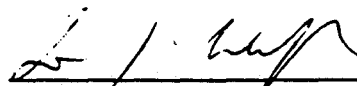
WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

1. Award the United States a judgment against the defendant Nick Lipari, jointly and severally, for all unreimbursed costs incurred by the United States, including its agencies, in response to the release or threat of release of hazardous substances at or from the Site, plus interest;


2. Enter a declaratory judgment, pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that the defendant Nick Lipari is liable, jointly and severally, in favor of the United States for any future costs incurred by the United States in response to the release or threat of release of hazardous substances at or from the Site; and

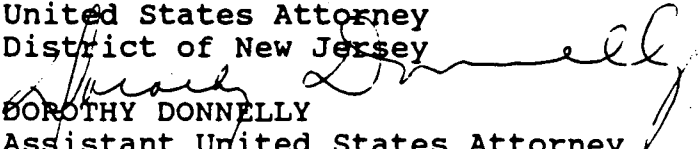
3. Award the United States costs, including its administrative costs and attorneys' fees, and any other relief as the Court finds just and appropriate.

Respectfully submitted,



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1-DEFENDANT

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